UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: May 8, 2003

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
CHICAGO REGIONAL OFFICE
CHICAGO, ILLINOIS; AND
OAK PARK HEARING OFFICE
OAK PARK, MICHIGAN

Respondent

and Case No. CH-CA-01-0626

ASSOCIATION OF ADMINISTRATION LAW
JUDGES, IFPTE, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS CHICAGO REGIONAL OFFICE CHICAGO, ILLINOIS; AND OAK PARK HEARING OFFICE OAK PARK, MICHIGAN Respondent	
and ASSOCIATION OF ADMINISTRATION LAW JUDGES, IFPTE, AFL-CIO Charging Party	Case No. CH-CA-01-0626

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 9, 2003**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 8, 2003
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS CHICAGO REGIONAL OFFICE CHICAGO, ILLINOIS; AND OAK PARK HEARING OFFICE OAK PARK, MICHIGAN Respondent	
and ASSOCIATION OF ADMINISTRATION LAW JUDGES, IFPTE, AFL-CIO Charging Party	Case No. CH-CA-01-0626

LaTina Burse Greene, Esquire
For the Respondent

Philip T. Roberts, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. [1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent violated §§16(a)(5) and (1) by its refusal to bargain locally on the size of ALJ's offices in Oak Park or failed to provide a negotiator at the local level with authority to modify office size policy when

[1] For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71" of the statutory reference, i.e., Section 7116 (a)(5) will be referred to, simply, as, "§ 16(a)(5)".

the issue already was being negotiated at the national level. For reasons set forth below, I find that it did not.

This proceeding was initiated by a charge filed on August 7, 2001 (G.C. Exh. 1(a)) and the Complaint and Notice of Hearing issued July 30, 2002, setting the hearing for October 9, 2002, pursuant to which a hearing was duly held on October 9, 2002, in Chicago, Illinois, before the undersigned. All parties were represented at the hearing and were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument, which each party waived. At the conclusion of the hearing, November 12, 2002, was fixed as the date for mailing post-hearing briefs, which time subsequently was extended on motion by Respondent, to which there was no objection, to November 27, 2002. Respondent and General Counsel each timely mailed an excellent Brief, received on, or before, December 2, 2002, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1. The Association of Administrative Law Judges, IFPTE, AFL-CIO (hereinafter, "Union") is the certified exclusive representative of a nationwide collective bargaining unit of Administrative Law Judges of Respondent Social Security Administration's Office of Hearings and Appeals (G.C. Exhs. 1(b), Par 3; 1(d), Par 3)(hereinafter, "OHA").

2. Following certification, the Union and OHA negotiated an Interim Agreement, dated March 30, 2000, pending agreement on a More Comprehensive Agreement. The parties began negotiating the Agreement in September, 2000, and by May, 2001, had reached an accord on everything except the article concerning Facilities and Service which included, inter alia, office size for ALJs, hearing room size, and employee parking. On May 11, 2001, the parties agreed to separate out the Facilities and Services Article and seek ratification by the bargaining unit and agency head approval of rest of their accord. The Agreement was ratified and approved in August, 2001 (Tr. 54).

On May 11, 2001, the parties agreed to continue negotiations on the Facilities and Services Article (Res. Exh. 3) for up to six months. These negotiations continued through November, 2001, and eventually reached impasse (Tr. 52-53). The Union then requested the assistance of the Federal Service Impasses Panel (hereinafter, "FSIP"). The

FSIP issued its Decision and Order (Case No. 02 FSIP 61) on October 24, 2002 (Respondent's Brief, Exhibit A).

3. OHA and the General Services Administration, Washington, D.C., are parties to an agreement titled, "Space Allocation Standard for OHA Field Offices" hereinafter, "SAS") (Res. Exh. 2; Tr. 164). The current SAS has been in place since 1988 (Tr. 165) and may be changed at the request of OHA but only by the Associate Commissioner or someone delegated such authority by the Associate Commissioner (Tr. 164-165). The SAS authorizes private office space for ALJs not to exceed 200 sq. ft. per office (Res. Exh. 2, pp. 11-12; Tr. 164) and hearing rooms not to exceed 300 square feet (id.)

Dating back to at least 1988, OHA's past practice has been to grant ALJs office space not to exceed 200 sq. ft. (Tr. 165).

4. Pursuant to the agreement of May 11, 2001 (Res. Exh. 3) negotiations at the National level continued on the Facilities and Services Article (Tr. 5, 75, 162). As OHA's Chief Negotiator of this Article, Ms. Marybeth Pepper had the delegated authority to modify or alter the SAS but determined that the Union had failed to show justification for additional office space size (Tr. 166, 109); and that the SAS's dictated space for the size of ALJ's office was in accordance with the industry standard (Tr. 169).

5. On February 5, 2001, Ms. Carol Goldstein, Hearing Officer Director of the Oak Park, Michigan, OHA Office, notified the Union, as well as the other labor organizations, AFGE and NTEU, representing employees at the Oak Park Office, of the decision to relocate the Office to the fifth floor of the Crown Pointe Building, and of management's intent to hold an informational meeting on February 15, 2001 (G.C. Exh. 2; Tr. 23).

6. On February 15, 2001, Respondent held the informational meeting and met with representatives of the Union, NTEU and AFGE (Tr. 23). The unions were given the opportunity to provide suggestions as to office space location, hallways etc. but were told that negotiations would take place later (Tr. 23-24).

7. In March, 2001, the Oak Park Hearing Office Chief Administrative Law Judge (HOCALJ), Judge Wilenkin, drafted a floor plan for the new Oak Park Office (G.C. Exh. 3) which was sent to each of the unions. (Tr. 93). Ms. Goldstein appended a statement that if no comments were received by March 23rd management would assume that the unions agreed

with the plan (Tr. 25). The Union was satisfied because it provided the ALJs with offices of about 224 square feet (Tr. 25-26).

However, or, or about, March 27, 2001, this floor plan was disapproved by the Regional Chief Administrative Law Judge, Judge Paul Lillios, because the size of the offices exceeded the SAS (Tr. 26-27, 93, 109-110). Following the disapproval of the March, 2001, Floor Plan [Wilenkin's Floor Plan], Judge James Horn, then Regional Vice-President of the Union (Tr. 20, 117), called Judge Lillios on April 3, 2001, and Judge Lillios told him that, ". . . he could not give any more than 200 square feet in the floor plan to administrative law judge offices because of the space allocation standards that existed . . . and that he was simply precluded from giving more space than was allowed in that document [SAS]." (Tr. 28). Judge Lillios did not specifically note a conversation with Judge Horn on April 3, 2001, but he said, ". . . I am fairly confident that I would have had at least one conversation and maybe more with Judge Horn over this particular issue of our utilization of the space allocation standard. And my conversations to Judge Horn were, number one, I didn't feel that I had the authority to ignore the space allocation standard; and number two, I knew that this was an issue -- this precise issue was being bargained at the national level. And it was my understanding, I think Jim had direct knowledge, or Judge Horn had direct knowledge because he was a member of the facilities team." (Tr. 117-118; see, also, 128-129, 142, 145-146).

8. On April 25, 2001, Ms. Goldstein advised Judge Horn of a meeting scheduled for May 2, 2001, in the Chicago Regional Office to discuss the proposed floor plan for Oak Park (G.C. Exh. 5).

At the May 2, meeting, Judge Horn requested bargaining on office space in excess of 200 square feet. Respondent, ". . . simply noted [it] for the record" and told all of the unions present that, ". . . bargaining would take place at a later date and that there was nothing that could be done to expand the drawing." (Tr. 31). On, May 16, 2001, the Union filed an ULP charge alleging a refusal to bargain. (Tr. 31-32)

9. On May 25, 2001, Ms. Goldstein wrote the President of the Union, Judge Bernoski, in Milwaukee, Wisconsin, and stated, in part, ". . . The purpose of this correspondence . . . is to provide the AALJ formal notice of the agency's proposed floorplan for the new [Oak Park] space to which this office will be relocating. That proposed

floorplan is attached . . . If the AALJ wishes to negotiate over this proposed floorplan, you or your designee is requested to invoke the AALJ's right to do so in accordance with Article 9, Section 3 of the Interim Agreement." (G.C. Exh. 6).

10. By letter dated May 29, 2001, transmitted by facsimile, Judge Horn advised Judge Lillios that AALJ demanded to bargain concerning Respondent's proposed 200 square feet office proposal (G.C. Exh. 7).

11. By electronic mail dated June 21, 2001, Judge Horn advised Ms. Goldstein that the Union's negotiator would be Judge Freedman; that the Union wished to negotiate separately; and that, "There still remains open the issue or (sic) whether or not Ms. Watkins [Respondent's negotiator] will have the authority to negotiate office size greater than 200 square feet . . . ." (G.C. Exh. 9).

12. On June 21, 2001, the Union withdrew its May 16, 2001, ULP charge, ". . . based upon the Agency's agreement to bargain (G.C. Exh. 1(a), Attachment ¶ (b)).

13. On July 31, 2001, Judge Lillios called Judge Bernoski, President of the Union, and told him liquidated damages would begin to accrue (Tr. 40). Judge Lillios further explained that beginning September 1, 2001, Respondent had been advised it would have to begin paying $38,000.00 per month for the leased, but unoccupied space, as well as the rent on the space they still occupied (Tr. 121, 122); and that it was necessary that they have an agreed floorplan before the "build-out" can begin (Tr. 120).

14. By letter dated August 16, 2001, Judge Lillios advised Judge Horn, in part, as follows:

> "We are in receipt of your August 2, 2001 correspondence regarding the Union's refusal to agree to the Oak Park space floor plan. We understand ALJ office space size to constitute the primary obstacle to IFPTE sign-off. That is, IFPTE - through its locally designated representative - demands the right to bargain ALJ office size exceeding the current 200 square foot Space Allocation Standard.
>
> ". . . Our attached last, best offer floor plan is in full compliance with the SAS. . .

"Additionally, management has no obligation to bargain that specific issue below the national level of IFPTE recognition, where IFPTE currently is engaged in national negotiations covering this very subject.

"We believe that we must proceed with the Oak Park space build-out at this time, even without IFPTE's agreement, because of the monetary damages that further delay will incur. . . .

"Attached is our last best offer floor plan, which, absent any agreement with IFPTE, we plan to sent to GSA on August 20, 2001, in order to begin construction as soon as possible.

"Management will, of course, continue to bargain and attempt to reach agreement with IFPTE on all . . . negotiable issues related to this office relocation.

. . . ." (G.C. Exh. 11).

15. Respondent did not sent the floor plan to GSA on August 20, but, instead, on August 23, 2001, Judge Lillios sent Judge Horn another letter, by facsimile and by mail, which, for the most part, repeated his August 16, 2001, comments but added the further provisions:

" . . .

"As a further attempt to reach agreement on this floor plan, we propose to use the services of a mediator from the Federal Mediation and Conciliation Services (FMCS) . . . A mediator would be available to work with IFPTE and management on this matter next week, all day on Monday, August 27, or in the afternoon on Wednesday, August 29. Please advise me whether such mediation is acceptable to IFPTE.

. . .

". . . we plan to sent to GSA on August 31, 2001 . . . ." (G.C. Exh. 12).

16. On August 24, 2001, Judge Lillios sent Judge Horn an e-mail in which he stated, in part,

> "As I just indicated to you on the telephone, we have not changed our position that it is inappropriate to bargain ALJ office size at the local or regional levels. The IFPTE has exclusive recognition at the national level of OHA. There is no statutory obligation or authorization for bargaining below the level of exclusive recognition unless the parties bilaterally agree to lower level negotiations. The parties have not agreed to such negotiations, and OHA has not waived its right to insist on negotiations at the level of recognition on this matter.
>
> ". . . we have agreed to reserve a FMCS mediator for possible service for Wednesday afternoon, August 29, 2001, at the Oak Park Hearing Office. Following your union conference call . . . Monday, August 27, 2001, you will contact me by noon August 27, to give your final indication as to whether . . . the union will participate in mediation on Wednesday.
>
> . . . ." (G.C. Exh. 13).

Judge Horn, prior to the telephone call on August 24, had sent Judge Lillios an e-mail in which he stated, in part, as follows:

> ". . . I (sic)[n] response to your 8/23/01 memo . . . the Association has always been willing to bargain this issue. I assume from your memo [G.C. Exh. 12] that management has changed its position and wishes to bargain. As we have never met to bargain, mediation may be premature. I would suggest that bargaining . . . take place first. . . ." (id.)

17. Judge Horn stated that the mediation session took place on August 29, 2001; that he was present for the Union and that Messrs. Ed Koven and Dadabo were present for Respondent; that negotiations did not take place; that we explained our positions to the mediator, management ". . . took the position that again the space allocation standard prevented them from giving greater than 200 square feet, and they also raised the issue that this issue was being bargained at the national level and that it should

stay there and could not be dealt with at the local level." (Tr. 48).

Judge Horn "repeated" the Union's position, namely, ". . . that once we started our collective bargaining process, that management had really two options if they chose to relocate an office. Number one, they could choose not to relocate until facilities article was completed, or they could go ahead with the relocation, but would have to bargain locally." (id.) (Emphasis supplied).

The Commissioner met separately with the parties, going back and forth a couple of times, then met with both sides present, at which time, the Commissioner said she was not going to declare an impasse and that she was not going to write any report (Tr. 49).

18. On August 30, 2001, Judge Lillios sent Judge Horn a letter, by e-mail and hard copy (G.C. Exh. 14; Tr. 50), in which he stated, in part, as follows:

> "Because of the reasons explained in our August 16, 2001 memo and discussed thoroughly yesterday during mediation, we will proceed to send our last, best offer floor plan to GSA on August 31, 2001, in order to begin construction as soon as possible. A copy of that floor plan is attached.
>
> "Management will, of course, continue to bargain and attempt to reach agreement with IFPTE on all . . . proposals on negotiable issues related to this office relocation." (G.C. Exh. 14).

19. By e-mail, dated September 19, 2001, Mr. Ken Holstrom,

Realty Specialist, Office of Business Performance, General Services Administration, stated to Judge Horn, in part, as follows:

> ". . .
>
> "Current GSA policy is to provide space to client agencies based on the amount of space they request. GSA may assist agencies in determining the amount of space that will efficiently satisfy its request, but in no way controls the amount of space an agency ultimately decides it wants.
>
> "Since 1996, some client agency headquarters have established Space Allocation Standards with GSA. However, any square foot limitations . . . were established by the client agency and not dictated by GSA.
>
> "The primary intent in issuing the SSA SAS (sic) was to allow SSA to establish a national standard for GSA to follow when satisfying requirements such as yours. However, ultimately it is an internal decision by the client agency to modify the standards if they wish." (G.C. Exh. 15).

20. On March 27, 2000, the National Office of OHA and the International Union signed an Interim Agreement (G.C. Exh. 16). Charging Party, and General Counsel, rely on the provision of Article 9, Section 4D. (id. p. 27). However, because Sections 4A through 4D and 4F are interrelated, the text of these Sections are set forth as follows:

> "Section 4
>
> "A.The Parties agree that proposed changes which apply on a nationwide or multi-regional basis shall be negotiated at the OHA Central Office level.
>
> B. Proposed changes which will be implemented in hearing offices in more than one (1) region made pursuant to a national or multi-regional initiative that require variation in the changes to meet the needs of each individual hearing office will be negotiated at the appropriate regional office(s).

C. Proposed changes which apply at more than one (1) hearing office within a region will be negotiated at the regional office level.

D. Proposed changes which apply to one (1) hearing office will be negotiated at that hearing office.

. . .

F. Both Parties agree that officials of SSA/ OHA and the Union at levels lower than the National Level do not have authority to negotiate agreements that conflict with this National Agreement." (G.C. Exh. 16, Article 9, Sections 4 A, B, C, D, and F, pp. 27-28).

21. There is no dispute that there was no bargaining on the size of ALJ offices; and General Counsel stated,

". . . the Union and the Respondent did negotiate to agreement over other issues relating to the impact and implementation of the move." (General Counsel's Brief, pp. 8-9).

CONCLUSIONS

The International Federation of Professional and Technical Engineers, AFL-CIO, Association of Administrative Law Judges is the certified exclusive representative of a nationwide collective bargaining unit of Administrative Law Judges of the Social Security Administration's Office of Hearing and Appeals. Absent agreement to the contrary, the mutual obligation to bargain exists only at level of recognition and, upon certification, OHA was obligated to bargain only with IFPTE at the national level. Department of Health and Human Services, Social Security Administration, 6 FLRA 202, 203 (1981); Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 39 FLRA 1409, 1417 (1991); U.S. Food and Drug Administration, Northeast and Mid-Atlantic Regions, 53 FLRA 1269, 1274 (1998), Request For Reconsideration Denied, 54 FLRA 630 (1998). The Union and General Counsel purport to find the authority to negotiate the size of ALJs offices locally in Article 9, Section 4D of the parties' Interim Agreement (G.C. Exh. 16, Article 9, Section 4), arguing that they sought only to negotiate office size at Oak Park, Michigan. While earnestly asserted, the argument

does not bear close scrutiny and I find it wholly unpersuasive.

1. NO DELEGATION OF AUTHORITY TO NEGOTIATE OFFICE SIZE AT LOCAL LEVEL

First, the meaning of subsection D can be understood only in context with the other subsections of Section 4. Thus, subsection A provides that, "The Parties agree that proposed changes which apply on a nationwide or multi-regional basis shall be negotiated at the OHA Central Office level. Subsection B provides, "Proposed changes which will be implemented in hearing offices in more than one (1) region made pursuant to a national or multi-regional initiative that require variation in the changes to meet the needs of each individual hearing office will be negotiated at the appropriate regional office(s). Subsection C provides, "Proposed changes which apply at more than one (1) hearing office within a region will be negotiated at the regional office level." Subsection D provides, "Proposed changes which apply to one (1) hearing office will be negotiated at that hearing office." And subsection F provides, "Both Parties agree that officials of SSA/OHA and the Union at levels lower than the National Level do not have authority to negotiate agreements that conflict with this National Agreement." (G.C. Exh. 16, Article 9, Sections 4 A, B, C, D, and F [These provisions are carried over to the August, 2001, National Agreement (Tr. 54), as Article 2, Section 4 A-D and G]. Neither OHA nor IFPTE delegated authority to negotiate ALJ office size below the national level. To the contrary, this was a specific issue under negotiation, from September 2000, at the national level, which was ultimately resolved by the Federal Service Impasses Panel's Decision and Order on October 24, 2002 (Respondent's Brief, Exhibit A). Moreover, Wilenkin's Floor Plan, to which the Union had no objection, was disapproved by the Regional Chief Administrative Law Judge, Judge Lillios, because the size of the ALJ offices exceeded the Space Allocation Standards (SAS). On April 3, 2001, Judge Lillios told Judge Horn he could not give more than 200 square feet for ALJ offices because of the SAS and he was simply precluded from giving more space than was allowed by the SAS. Judge Lillios also told Judge Horn that it was inappropriate to negotiate this issue at the local level because this precise issue was already being bargained at the national level as he, Judge Horn, well knew because he, Horn, was a member of the team negotiating this matter.

From the record, as General Counsel asserts (General Counsel's Brief p.7, n.3), Respondent did not state, until August 16, 2001, that management has no obligation to

bargain office size below the national level of IFPTE recognition. What Judge Lillios said in his letter of August 16, 2001, to Judge Horn was, in part, as follows:

> ". . . the current Space Allocation Standard (SAS), that was effective March 1998 . . . governs all OHA space actions. This SAS provides for ALJ offices of 200 square feet . . .
>
> "Additionally, management has no obligation to bargain that specific issue below the national level of IFPTE recognition where IFPTE currently is engaged in national negotiations covering this very subject." (G.C. Exh. 11).

Nevertheless, Judge Lillios had made clear from the beginning that office space was governed by the national SAS and, further, that it was inappropriate to bargain this issue at the local level because it was already being negotiated at the national level, which was not materially different from saying there was no obligation to bargain that issue, office size, below the national level of IFPTE recognition where IFPTE currently is engaged in national negotiations concerning this very subject.

Accordingly, the Union was without authority to negotiate locally the issue of ALJ office size.

2. PROPOSED CHANGE OF ALJ OFFICE SIZE IS NOT A CHANGE APPLICABLE TO ONE HEARING OFFICE.

OHA has ALJs in not less than 139 offices located throughout the United States and negotiation of office size at any location would directly affect ALJ offices nationwide and, indeed, would have a domino effect nationwide on office space occupied by OHA employees represented by NTEU and AFGE. Not only is this shown by the language of Section 4A, but OHA and IFPTE unequivocally determined that office size was a matter that applied on a nationwide basis by entering upon negotiations on this specific issue at the national level. This bargaining continued from September 2000 until the issue finally was resolved by the Decision and Order of the FSIP on October 24, 2002. Inasmuch as national bargaining on the size of ALJ offices had begun in September, 2000, and notice of the proposed move at Oak Park, Michigan, was not given until February, 2001, under no construction of the Interim Agreement was there ever authority to negotiate office size at the local level.

3. SUBSECTION F PRECLUDED LOCAL NEGOTIATION OF SAME MATTER THAT WAS BEING NEGOTIATED AT THE NATIONAL LEVEL.

Subsection F provides, "Both Parties agree that officials of SSA/OHA and the Union at levels lower than the National Level do not have authority to negotiate agreements that conflict with this National Agreement." (G.C. Exh. 16, Article 9, Section F). Once OHA and IFPTE embarked on negotiations at the national level concerning ALJ office size, not only was there no delegated authority to negotiate office locally, but local negotiations were precluded on office size. Article 11, Section 2 provides, "This Agreement shall remain in full force and effect for six months or until a permanent Agreement is implemented." (G.C. Exh. 16, Article 11, Section 2, p. 35); A permanent agreement was implemented in August, 2001, except, inter alia, for a Facilities Article, which specifically included ALJ office size, on which negotiation continued and, ultimately was resolved by the Decision and Order of the FSIP on October 24, 2002. Obviously, any local deviation in office size from what was fixed by the national Agreement would have been in conflict with the National Agreement, and therefore was precluded.

Contrary to Judge Horn's position, that once local negotiation on the move began, Respondent had two options, "Number one, they could choose not to relocate until facilities article was completed, or they could go ahead with the relocation, but would have to bargain locally" (Tr. 48), I agree with Respondent that its obligation during the pendency of negotiations on office size was to maintain the status quo, which it did. Respondent adhered to the 1998 SAS on office size and Respondent and the Union did, as General Counsel stated, ". . . negotiate to agreement over other issues relating to the impact and implementation of the move." (General Counsel's Brief, p. 8-9).

4. NO REFUSAL TO BARGAIN

Because Respondent was under no duty under the Statute to negotiate office size at the local level because that specific issue was already being negotiated at the national level, Respondent did not violate §16(a)(5) or (1) either by failing to provide a negotiator with authority to modify the SAS at the local level or by refusing to negotiate office size at the local level. General Counsel's reliance on United States Department of the Treasury, Internal Revenue Service and United States Department of the Treasury, Internal Revenue Service, Houston District, 25 FLRA 843 (1987)(IRS, Houston District)is misplaced. Here, unlike IRS, Houston District, there was no authority delegated for

local negotiation of office size but, to the contrary, authority to negotiate office size locally was precluded. Here, unlike IRS, Houston District, the issue of office size was already under active negotiation at the national level. Indeed the issue was resolved by the Decision and Order of the FSIP on October 24, 2002. And here, Respondent maintained the status quo concerning office size during the pendency of national negotiations of that issue and negotiated to agreement over other issues relating to the impact and implementation of the move at Oak Park, Michigan.

Having found that Respondent did not violate §16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. CH-CA-01-0626 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 8, 2003
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. CH-CA-01-0626, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

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Dated: May 8, 2003
Washington, DC